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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,565	03/25/2004	Anne Sabbagh	LOREAL 3.0-016	7965

  

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LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090		

  

EXAMINER	
VENKAT, JYOTHSNA A	

  

ART UNIT	PAPER NUMBER
1615	

  

MAIL DATE	DELIVERY MODE
12/31/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/809,565

Applicant(s)

SABBAGH ET AL.

Examiner

JYOTHSNA A. VENKAT Ph. D

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 and 42-77 is/are pending in the application.
- 4a) Of the above claim(s) 5, 22-37, 39, 40, 42-62, 64 and 65 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-21, 38, 63 and 66-77 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date See Continuation Sheet.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :1/14/05;10/31/06;1/8/07and 6/14/07.

### DETAILED ACTION

Receipt is acknowledged of election filed on 10/12/07. Receipt is also acknowledged of IDS filed on 1/14/2005; 10/31/2006; 1/8/2007 and 6/14/2007. Claims 1-40 and 42-77 are pending in the application and the status of the application is as follows:

#### *Election/Restrictions*

Applicant's election of group I in the reply filed on 10/12/07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 22-37, 39-40, 42-62 and 64-65 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/12/07.

Applicant's election of species drawn to compound of formula I, which are i.e., gluconic acid, sodium gluconate, potassium gluconate, anhydrous calcium gluconate, calcium gluconate monohydrate, calcium borogluconate, magnesium gluconate, iron gluconate, manganese gluconate, zinc gluconate and copper gluconate in the reply filed on 10/12/07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim 5 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/12/07.

Claims 1-4, 6-21, 38, 63 and 66-77 are pending in the application and the status of the application is as follows:

***Priority***

If applicant desires to claim the benefit of a prior-filed application under 35 U.S.C. 119(e), **60/462,096, which is in French**, Applicant must provide a certified English translation of the provisional applications. Further, a specific reference to the prior-filed application in compliance with 37 CFR 1.78(a) must be included in the first sentence(s) of the specification following the title or in an application data sheet. For benefit claims under 35 U.S.C. 120, 121 or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of the applications.

If the instant application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

If the reference to the prior application was previously submitted within the time period set forth in 37 CFR 1.78(a), but not in the first sentence(s) of the specification or an application data sheet (ADS) as required by 37 CFR 1.78(a) (e.g., if the reference was submitted in an oath or declaration or the application transmittal letter), and the information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt, the petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(0 are not required. Applicant is still required to submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS. See MPEP § 201.11.

***Information Disclosure Statement***

The information disclosure statement filed 1/14/05 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

STIC search cited on IDS 1/18/07 has not been considered.

The co-pending applications cited on 6/14/07 have not been considered since applicants did not provide copies of the applications.

***Specification***

Specification filed on 3/25/04 is in French Language. Specification filed on 1/14/05 is certification of translation. Page 1 of the document does not identify the corresponding French application. Is it translation of the French provisional application? Why is French specification filed on the filing date? Detailed explanation is requested.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 6, 9-13 are rejected under 35 U.S.C. 102(e) as being anticipated by U. S. Patent 7,195,755 ('755)

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

See col.8, ll 47-50. Patent teaches compositions and complexing agent. This is same as claimed method of "a method for complexing reducing composition for permanently reshaping keratin fibers. Lanthanizing reads on "reshaping keratin fibers". Hydroxide ion is the reducing agent (alkaline reducing agent). See also col.7, ll 35-40 for the claimed reducing agents and see paragraph bridging col.s 7-8 for the weight percent (claims 1, 9-13). See col.9, lines 25-27 for claimed species gluconic acid belonging to formula I and see claims 23-24 and especially claim 24 for the complexing agent gluconic acid (elected species belonging to formula I).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-4, 6-21, 38, 63 and 66-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of U. S. Patents 7,195,755 ('755) and 5,064,441 ('441) and 6,641,618('618).

See above for the explanation with regard to patent '755. Patent '755 does not teach the limitation of claims 14-20, which are amphiphilic polymer, surfactants, rheology modifier, solvents and adjuvants and patent '755 does not teach the weight percent of hydroxy acids. Patent '441 teaches hair treatment composition, bleaching composition using formula I and it is taught by patent '441 as non-reducing organic chelate. See the abstract, see col.3, ll 14-52 and see col.5, line 50 for gluconic acid, see col.6, ll 6-10 for the weight percent of formula I and this includes the claimed species gluconic acid. Patent at col.6, line 36 also teaches gluconic acid and patent at col.6, ll 47-64 teaches the components that can be added to the hair treatment composition and these include claimed surfactants and rheology modifiers (thickeners). See table 1 and see examples 5-8. Patent '618 teaches aqueous compositions for bleaching keratin fibers comprising solvent and nonionic or anionic amphiphilic polymer. See the title, see col.1, line 65 to col.3, line 60 for anionic and non ionic amphiphilic polymer claimed in claim 15 and also the weight percent of the polymer. See paragraph bridging col.s 3-4 alkalizing agents claimed in claim 18, see col.4, ll 10-23 for the solvents claimed in claim 19, see col4, line 49 to col.6 line 41



for the surfactants and weight percent of the surfactants claimed in claim 16 and patent teaches the limitation of claim 17 at col.18, line 5 to col.19, line 57. Rheology modifiers are also known as thickeners. Examples 1-2 uses EDTA and also sequestering agents and patent '755 teaches formula I as the sequestering agents.

Accordingly it would be obvious one skilled in the hair care art to prepare compositions by using the reducing agents and complexing agents taught by patent '755 and also taught by patent '441 and combine it with the conventional ingredients like surfactants, amphiphilic polymers, basifying agents, solvents, thickeners taught by patent '618 in analogous bleaching compositions. One of ordinary skill in the art would be motivated to add gluconic acid (complexing agent) to reducing compositions with the reasonable expectation of success that gluconic acid forms chelates with the reducing agent thereby increasing the concentration of the counter ion of the reducing agent which in turn makes the process of shaping keratin fibers faster. This is prima facie case of obviousness.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT Ph. D whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/JYOTHSNA A. VENKAT/ Ph. D**  
**Primary Examiner**  
**Art Unit 1615**

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